

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MIKE HARRIS and JEFF DUNSTAN,)	
individually and on behalf of a class of similarly)	
situated individuals,)	
)	
Plaintiffs,)	Case No. 1:11-5807
)	
v.)	Hon. James F. Holderman
)	
COMSCORE, INC., a Delaware corporation,)	Magistrate Judge Kim
)	
Defendant.)	
)	

**DECLARATION OF RAFEY S. BALABANIAN
IN SUPPORT OF PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT'S RENEWED MOTION TO DISMISS UNDER RULE 12(B)(3)**

I, Rafey S. Balabanian, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18 and a citizen of the State of Illinois. I am licensed to practice law in the State of Illinois, a partner at the law firm Edelson LLC, and one of the attorneys representing Plaintiffs Mike Harris and Jeff Dunstan (“Plaintiffs”), the Class, and the Subclass in this matter. I am fully competent to make this Declaration, have personal knowledge of all matters set forth herein unless otherwise indicated, and could and would testify truthfully to such matters if called as a witness in this action. I make this Declaration in support of Plaintiffs’ Response in Opposition to Defendant’s Motion to Dismiss Under Rule 12(b)(3).
2. On August 9, 2013, comScore propounded a written discovery request on Plaintiffs asking them to admit that they “accepted comScore’s Privacy Statement and User License Agreement.”
3. On September 5, 2013, Plaintiffs, in addition to asserting certain objections, denied that request.

4. On September 26, 2013, the Parties telephonically met and conferred regarding their discovery requests and responses. During that phone call, comScore challenged Plaintiffs' responses to comScore's request that they admit consent to *comScore*'s Privacy Statement and User License Agreements. I informed comScore that Plaintiffs have maintained throughout the litigation that comScore was not a party to any agreement with Plaintiffs, and that comScore has not produced any evidence to refute that position. I also informed comScore that while Plaintiffs would stand by their denial of that request, if comScore wanted to propound another request asking that Plaintiffs admit they clicked "Accept" when presented with the Sponsors' Downloading Statements, Plaintiffs would admit that.

5. On September 30, 2013, I sent comScore's counsel a letter memorializing our meet and confer, and reiterated that "Plaintiffs' answers to these Requests for Admission are entirely consistent with Plaintiffs' long-standing position that comScore is not a party to the Downloading Statement or the Privacy Policies and user License Agreement." The letter also reiterated that "these Requests as written lend themselves to denials, but . . . Plaintiffs will respond in good faith to additional requests, should comScore choose to issue any."

6. comScore's counsel responded by letter on October 3, 2013, and noted that comScore "understand[s] that Plaintiffs will not amend their Responses to [those] Requests."

7. comScore never issued another Request to Admit Facts asking Plaintiffs to admit that they clicked "Accept" when presented with the Downloading Statements.

8. Attached hereto as Exhibit A is a true and accurate copy of an Excerpt of the Transcript of the Rule 30(b)(6) Deposition of Michael Brown.

9. Attached hereto as Exhibit B is a true and accurate copy of the RelevantKnowledge Privacy Policy and User License Agreement ("ULA"). This particular copy

of the ULA was previously filed contemporaneously with Plaintiffs' Supplemental Motion for Class Certification, (*see* Dkt. 156-9), and is reattached here for the sake of convenience.

10. Attached hereto as Exhibit C is a true and accurate copy of an email from Sarah Villyard to Armando Pantano, dated Dec. 27 2012, produced at Bates Nos. CS0071631.

11. Attached hereto as Exhibit D is a true and accurate copy of an email from Latoya Peterson-Renfrow to Helena Barkman, dated May 23, 2007, produced at Bates No. CS0042536.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this November 22, 2013 in Chicago, Illinois.

/s/ Rafey S. Balabanian

CERTIFICATE OF SERVICE

I, J. Dominick Larry, an attorney, hereby certify that on November 22, 2013, I served the above and foregoing ***Declaration of Rafey S. Balabanian in Support of Plaintiffs' Response in Opposition to Defendant's Renewed Motion to Dismiss Under Rule 12(b)(3)***, by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system, on this, November 22, 2013.

s/ J. Dominick Larry
